**Hedison Manufacturing Co.** *and* **Rhode Island Workers Union Local 76, Service Employees International Union, AFL-CIO.** Cases 1-CA-15206, 1-CA-15489, and 1-CA-16163

March 18, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On August 21, 1981, Administrative Law Judge George F. McInerny issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an exception and a brief in support thereof and in support of the Administrative Law Judge's Decision. Subsequently, Respondent and the Charging Party Union (hereinafter referred to as the Union) filed a joint motion to modify the recommended Orders of the Administrative Law Judges in this case and in Case 1-CA-16694, etc.[1] The General Counsel filed a response to that motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge as modified herein. The Board has considered the joint motion to modify the Administrative Law Judge's recommended Order, and the General Counsel's response thereto indicating that he does not oppose the motion, and has decided to grant the motion and to adopt the Administrative Law Judge's recommended Order as modified herein.

1. The Administrative Law Judge found, *inter alia*, that Respondent unilaterally and discriminatorily laid off employees, in violation of Section 8(a)(5) and (3) of the Act. We agree, for the reasons set forth by the Administrative Law Judge, that Respondent unilaterally laid off employees in violation of Section 8(a)(5) of the Act. Contrary to the Administrative Law Judge, however, we do not find that Respondent discriminatorily laid off employees in violation of Section 8(a)(3) of the Act, and we therefore do not affirm the Administrative Law Judge's conclusion that it did. The layoffs in question were neither alleged in the complaint nor litigated at the hearing as being discriminatorily motivated. The General Counsel's posthearing brief to the Administrative Law Judge does not contend that the layoffs were discriminatorily motivated. Thus, the issue of discriminatory motive in regard to the instant layoffs was not before the Administrative Law Judge and his subsequent findings in this regard are therefore set aside.[2]

2. The Administrative Law Judge found that Respondent did not violate Section 8(a)(1) of the Act by publishing in the newspaper and posting on the bulletin board the notice to present and former employees set out in section III,B,3, footnote 14, of the Administrative Law Judge's Decision. We disagree, and, for the reasons set out below, we conclude that Respondent has violated Section 8(a)(1) of the Act as alleged in this regard.

In concluding that Respondent did not act unlawfully when, via newspaper ads and bulletin board notices, it asked employees who were interviewed by, or gave statements to, the Board to identify themselves to Respondent, the Administrative Law Judge relied principally on (1) the fact that Respondent did not confront employees on a personal, face-to-face basis in making its request, and (2) an absence of record evidence that employees *in fact* were coerced, or felt coerced, by Respondent's request.

A written request that employees who have cooperated in Board investigations into an employer's allegedly unlawful activity identify themselves to their employer, like such a request made in person, is coercive. And this is particularly so where, as in this case, the purpose of the request is not stated, and assurances against reprisal are not given.[3] Such requests tend to imply to employees that the employer is seeking to find out who gave statements to the Board, and to create fear that the employer may retaliate against employees who gave such statements. In the context of this case, and particularly in light of the numerous and serious unfair labor practices committed by Respondent, which warranted the issuance of a bargaining order in *Hedison Manufacturing Company*, 249 NLRB 791 (1980), the absence of any assurances against reprisals for employees who identify themselves to Respondent as having cooperated in the Board's investigation adds to the coerciveness of Respondent's newspaper ads and bulletin board notices.[4] The likely impact would be to inhibit the willingness of employees to cooperate in Board-conducted investigations.

[1] 260 NLRB 590 (1982).

[2] Indeed, in his response to the joint motion of Respondent and the Union to modify the Administrative Law Judge's recommended Order, the General Counsel concedes that the layoffs in this case were neither alleged as, nor appropriately found to be, violations of Sec. 8(a)(3).

[3] Cf. *Osco Drug, Inc., a wholly owned subsidiary of Jewel Food Companies, Inc.*, 237 NLRB 231, 235-236 (1978) (explicit assurances of no adverse action).

[4] See *Martin A. Gleason, Inc.*, 215 NLRB 340 (1974).

With regard to the absence of evidence of actual coercive effect of the notice on employees, the Administrative Law Judge has simply applied the wrong legal standard for evaluating the lawfulness of conduct which is alleged to have coerced, restrained, or interfered with employees in the exercise of the rights guaranteed them under the Act. The correct inquiry is not whether an employee or employees were *actually, in fact*, coerced or restrained, but rather whether the employer's conduct can reasonably be said to have *a tendency* to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.[5] We find that Respondent's notice had such a tendency in this case. Therefore, we conclude that Respondent has violated Section 8(a)(1) by requesting employees who were interviewed by Board agents to identify themselves.

3. In their joint motion to modify the recommended Order of the Administrative Law Judge in this case, Respondent and the Union assert that, subsequent to the court's enforcement of the Board's bargaining order in the earlier case involving these parties,[6] they have engaged in collective bargaining with respect to current wages, hours, and working conditions as well as with respect to Respondent's unilateral layoffs and changes in production standards, incentive rates, and work hours which the Administrative Law Judge found to be unlawful in the instant case. Specifically, the Union has retroactively agreed with Respondent as to the economic necessity for and method of implementation of the layoffs in this case, and has further agreed with Respondent that these layoffs were based solely on economic factors, that they need not be rescinded, and the laid-off employees need not be reinstated. Additionally, the Union has agreed with Respondent as to the appropriateness and method of implementation of Respondent's changes in incentive rates and work hours. Moreover, with respect to the changes in incentive rates, Respondent and the Union do not believe that any substantial financial detriment to unit employees resulted from such changes.

Accordingly, Respondent and the Union jointly move the Board to modify the Administrative Law Judge's recommended Order by deleting paragraphs 2(e) through (h) thereof.[7]

In his response to the joint motion, the General Counsel

> . . . does not oppose the parties' motion . . . and agrees that, in light of the developments recited in the Joint Motion, modification of the recommended orders as jointly moved will serve to effectuate the purposes and policies of the Act, and will not detract from the appropriateness of the remedy in the circumstances of these cases.

By their joint motion, Respondent and the Union have, in effect, reached a settlement agreement in resolution of most of the remedial matters in this case. The General Counsel has, in effect, endorsed that settlement agreement except for the 8(a)(1) allegation discussed above. Accordingly, we hereby grant the joint motion of Respondent and the Union.

The Administrative Law Judge's recommended Order is modified in accordance with our findings and conclusions set out above, and in accordance with the joint motion of Respondent and the Union.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hedison Manufacturing Co., Lincoln, Rhode Island, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with the Union.

(b) Unilaterally changing its incentive rates and standards.

(c) Unilaterally changing its workweek.

(d) Laying off employees without bargaining with the Union.

(e) Individually polling its employees concerning the length of the workweek.

(f) Asking employees who were interviewed by, or gave statements to, the National Labor Relations Board to identify themselves to Respondent.

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request of the Union, bargain collectively with it as the exclusive representative of its employees in the unit described below with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached,

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[5] See, e.g., *Production Stamping, Inc.*, 239 NLRB 1183, 1193 (1979); *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975).

[6] 249 NLRB 791 (1980), enfd. 643 F.2d 32 (1st Cir. 1981).

[7] Requiring Respondent to offer immediate and full reinstatement to laid-off employees, to make them whole for any loss of earnings they may have suffered as a result of the layoffs, and also to make whole any employees for losses they may have suffered because of Respondent's unilateral decision to change incentive rates, production standards, and work hours.

embody such understanding in a written and signed agreement. The appropriate unit is:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its 11 Wellington Road, Lincoln, Rhode Island and 116 Chestnut Street, Providence, Rhode Island facilities, including lead persons—floor ladies and plant clerical employees, but excluding all office clerical employees, salespersons, seasonal employees, guards, Foremen, Assistant Foremen, and all other Supervisors as defined in Section 2(11) of the Act.

(b) Upon request by the Union, bargain collectively with the Union concerning revisions in incentive rates and standards effected on and after May 14, 1978, and upon request by the union rescind such changes.

(c) Upon request by the Union, bargain collectively with the Union concerning the change in the workweek which was effective on May 21, 1979, and upon request by the union rescind such changes.

(d) Upon request by the Union, bargain collectively with the Union concerning the layoff announced on May 3, 1979, and any subsequent layoffs between that date and August 13, 1979.

(e) Post at its places of business in Lincoln and Providence, Rhode Island, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

> To engage in self-organization
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
>
> To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to bargain collectively with Rhode Island Workers Union, Local 76, Service Employees International Union, AFL–CIO.

WE WILL NOT unilaterally change incentive rates or standards or our workweek.

WE WILL NOT individually poll employees concerning the length of the workweek.

WE WILL NOT lay off any employees without consulting and bargaining with the Union concerning such layoffs.

WE WILL NOT ask employees who were interviewed by, or gave statements to, the National Labor Relations Board to identify themselves to us.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the Union concerning the wages, hours, and other conditions of employment of our employees.

WE WILL, upon request, bargain with the Union concerning changes in incentive rates and standards and about the workweek.

WE WILL, upon request, bargain with the Union concerning the layoff announced on May 4, 1979, and any subsequent layoffs between that date and August 13, 1979.

WE WILL, if the Union requests, rescind changes in incentive rates and standards and in the workweek.

## HEDISON MANUFACTURING CO.

## DECISION

### STATEMENT OF THE CASE

GEORGE F. MCINERNY, Administrative Law Judge: Based on a charge filed in Case 1-CA-15206 on November 14, 1978, by Rhode Island Workers Union, Local 76, Service Employees International Union, AFL-CIO,[1] herein called the Union,[2] and amended on December 20, 1978, the Acting Regional Director for Region 1 of the National Labor Relations Board, herein called the Board, issued a complaint on December 27, 1978, alleging that Hedison Manufacturing Co., herein called the Company, or Respondent, had violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* On January 4, 1979, Respondent filed an answer to this complaint, denying the commission of any unfair labor practices.

On January 18, 1979, the Union filed a charge in Case 1-CA-15489, and amended that charge on May 7 and 15, 1979. Based on this charge, as amended, the Regional Director for Region 1 issued an amended complaint on May 18, 1979, alleging further violations of Section 8(a)(1) of the Act. Respondent answered this complaint on June 11, 1979, again denying the commission of any unfair labor practices.

On June 6, 1979, the Union filed still another charge in Case 1-CA-16163. Based on this charge, the said Regional Director issued an order consolidating Cases 1-CA-15206, 1-CA-15489, and 1-CA-16163, and a further amended complaint on July 12, 1979. Thereafter, on July 26, 1979, Respondent filed an answer, continuing to deny the commission of any unfair labor practices.

Pursuant to notice contained in the amended complaint of July 12, 1979, a hearing was held before me[3] at which time the complaint was further amended, and during which all parties had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally.[4] Following the close of the hearing Respondent and the General Counsel submitted briefs, which have been carefully considered.

Upon the entire record in this case, I make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Hedison Manufacturing Co., Respondent herein, is a Rhode Island corporation maintaining its principal office and place of business in Lincoln, Rhode Island, where it is engaged in the manufacture and sale of jewelry and related products. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

The complaint, as amended at the hearing, alleges, and Respondent admitted at the hearing, and I find that Rhode Island Workers Union, Local 76, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Background*

The issues in this case remaining after the settlement, referred to above, depend, to some extent, for their resolution upon the existence of an obligation on the part of Respondent to bargain with the Union. That bargaining obligation, in turn, arises out of the facts of a prior series of charges and a petition for an election filed by the Union's predecessor against the Company beginning in January 1978 and consolidated into a single complaint by the Regional Director for Region 1 on August 9, 1978. This consolidated case was heard before Administrative Law Judge Benjamin Schlesinger in August, September, and October 1978, and resulted in a Decision by him dated May 18, 1979, in which he found numerous and repeated violations of Section 8(a)(1) and (3) of the Act involving an almost classic pattern of threats, interrogation, promises of benefits, attempted espionage, and solicitations of grievances, together with decreases in incentive rates, increases in eligibility standards, discharges and layoffs, all accompanied by, or caused by, management's virulent hostility toward the Union and its adherents. As a result of these findings Administrative Law Judge Schlesinger, having found that the Union had obtained valid authorization cards from a majority of Respondent's employees, in an appropriate unit, as of January 12, 1978, recommended that an order issue requiring Respondent to bargain with the Union.[5]

At the hearing in this case there was considerable discussion on two issues, the first concerning the right of the General Counsel to rely on the Administrative Law Judge's findings in the prior case to establish the Company's bargaining obligation; and the second, my duty to make findings of fact and conclusions of law based on those same findings.[6]

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[1] The name of the Union appears as amended at the hearing.

[2] This reference will also denote the Union's affiliation as Local 76 of the Service Employees International Union, AFL-CIO.

[3] Following the hearing, the General Counsel filed a motion to amend the record by making certain corrections to the transcript. There was no opposition to this motion, and its content comports with my memory of what was actually said. The motion is granted.

[4] During the hearing, the parties reached an informal settlement (J. Exh. 1) of the issues in the amended complaint concerning warnings to Daniel Carr. I approved the settlement, and these issues were not litigated. Having received no notification that the settlement agreement has not been complied with, I now dismiss the allegations contained in pars. 8(a) and (b), 9(a) and (b), 10, 17, 18, and 20 of the amended complaint.

[5] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

[6] In the end, however, the General Counsel moved that I defer my consideration of this case until the Board had ruled on the exceptions in Administrative Law Judge Schlesinger's case. In view of the timing of this decision, it almost goes without saying that that motion is granted.

With respect to the first issue, it is clear that a prior Board order would preclude further litigation here on the issues of pervasive and egregious unfair labor practices, the Union's majority, and the obligation to bargain.[7] In this case the General Counsel took the position that, even though the Board had not yet ruled in the case, he would refrain from putting into the record evidence as to those issues, and that he would take his chances that the Board's ruling would fill any evidentiary gaps in this case, or, conversely, that the allegations in this case would fall from lack of evidence.

The General Counsel's expectations were realized as the Board issued its Decision and Order in the prior case on May 27, 1980 (249 NLRB 791), affirming Administrative Law Judge Schlesinger's in most particulars including the bargaining order.[8]

In respect to the second question, the fact that I am not writing this decision before the Board's ruling in Administrative Law Judge Schlesinger's case renders the issue moot, although my reading of *Delchamps, Inc.*, 234 NLRB 262 (1978), indicates that my decision to defer consideration of this case until the Board reached its decision in the prior case was correct.

In accordance with the law as expressed in *Delchamps* and *Lehigh Lumber*, then, I take official notice of the Board's decision in the prior case involving this Respondent, and I find, based on that decision, that Respondent, throughout the time covered by the events of this case, had a duty to bargain with the Union concerning changes in wages, hours, and conditions of employment which it has failed to satisfy in violation of Section 8(a)(5) of the Act. Further, I infer and find that Respondent's actions in this case, as well as in the prior case, were motivated by pervasive and unabated feelings of animus and hostility toward the Union.[9]

### B. *Statement of Stipulated Facts*

There are no disputes of fact in this case. At the hearing, the parties entered into the following stipulations relevant to the allegations of the amended complaint.

1. Respondent has, on repeated occasions, modified production standards and incentive bonus rates for employees who are paid on an incentive basis.

This has occurred since January 12, 1978,[10] and continually until the present date. The departments affected by these changes are the direct labor production department, with the exception of plating, casting, and special products. The direct labor production departments where rates and standards have changed are press, all soldering departments, polishing department, stringing and unstringing departments, machine and linking departments, the epoxy department, the carding department, wrapping and gluing-mitering departments.[11]

Employees paid on an incentive basis receive a basic hourly wage; beyond the basic hourly wage they receive, they are paid for coverage based on the incentive rate for the particular job and the production standards.

This stipulation was amended by adding to it a further stipulation that on an average basis employees in the production departments in which employees receive incentive pay receive between 20 and 25 percent of their pay based on the incentive standards and rates.

2. On or about April 30, 1979, General Counsel's Exhibit 3[12] (a questionnaire polling employees on a proposal to shorten the workweek by lengthening the workday on 4 days, and working only one-half day on the fifth day) was distributed by Respondent to all employees of Respondent. All employees with the exception of Daniel Carr returned the questionnaire included in this exhibit to supervisory personnel.

On May 4, 1979, General Counsel's Exhibit 4[13] (an announcement by Respondent that the results of the questionnaire showed an overwhelming majority of employees in favor of the 4-1/2-day week, and announcing new hours in conformity with the new workweek) was distributed by Respondent to all employees of Respondent. The new schedule described in this exhibit was instituted on May 21, 1979, by Respondent. The previous schedule that was in effect before this memorandum was distributed required most full-time production and maintenance employees to work between the hours of 7:45 a.m. and 4:15 p.m. Monday through Friday.

In each case both before and after the May 21 change employees took 30 minutes of unpaid lunch time. Respondent has not notified or bargained with the Union regarding any matters at any time. Further, the effect of the change described in General Counsel's Exhibits 3 and 4 (2 and 3) and implemented on May 21 was to reduce the hours worked by the homemaker or mother shift production and maintenance employees from five 6-hour shifts per week to four 6-hour shifts per week, with no change in hourly pay, but with an attendant decrease in weekly pay.

The employees subject to this change, that is the employees of the mother shift or the homemaker shift, are those listed in General Counsel's Exhibit 4.

In connection with this stipulation, William O'Brien, Respondent's vice president of operations, and the sole

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[7] *Lehigh Lumber Company, Brown-Borhek Company, Ritter and Smith Company, and the Lehigh Valley Lumbermen's Association*, 238 NLRB 675 (1978).

[8] Two of the consolidated cases in the prior proceeding were severed by the Board and remanded to the Administrative Law Judge for further proceedings. Those cases are not relevant to the issues in the instant case.

[9] The General Counsel sought to introduce two documents at the hearing (G.C. Exhs. 7 and 8), which in his view tended to show the continuing interest on the part of the Union in the representation of Respondent's employees and the unremitting hostility of Respondent towards that interest. I rejected those exhibits at the hearing and reaffirm that ruling now. These tokens are not necessary to establish Respondent's hostility to the unionization of its employees since there is no evidence whatsoever that its views have changed in any way since the first hearing; since Administrative Law Judge Schlesinger's findings; or since the Board's affirmation of those findings.

[10] In this case I can consider and decide only upon matters which occurred after May 14, 1978, a date 6 months before the filing of the original charge in Case 1-CA-15206.

[11] This paragraph has been revised to conform with the transcript as amended by General Counsel's motion to amend.

[12] This should be G.C. Exh. 2.

[13] This should be G.C. Exh. 3.

witness in this proceeding, testified that he was familiar with Respondent's personnel practices only since joining Respondent in February 1978. O'Brien intimated that there was not much support material on these practices maintained by Respondent before he was hired, and that prior to February 1978 personnel practices were "somewhat confused." O'Brien was not aware of any previous practice of polling employees, but he did intimate that there were some sort of inquiries made in 1977 when the plant was moved from Providence to Lincoln.

3. The advertising shown on General Counsel's Exhibit 5[14] was placed by Respondent in the Providence Journal and Providence Evening Bulletin and ran on December 28 and 29, 1978, and on January 3 and 4, 1979, in those newspapers.

A copy of the ad was also placed on company bulletin boards visible to employees for approximately a week, at or about the time the ads were placed in the newspapers. The two newspapers are publications of daily circulation in the greater Providence area, including Lincoln, Rhode Island. They are the two largest newspapers in the Providence area.

No related notices or advertisements were otherwise placed by Respondent in newspaper or communicated to employees in the plant by bulletin board or other means.

4. On or about Friday, May 4, 1979, Respondent unilaterally instituted a layoff in various production and maintenance departments, to be effective on Monday, May 7, 1979. The employees subject to this involuntary layoff are listed in General Counsel's Exhibits 6(a) through (h).

These exhibits represent memoranda from William O'Brien to Donald Dutcher, both supervisors of Respondent, describing the employees and departments affected by the layoff. The late night shift employees listed on General Counsel's Exhibit 6(b) were not assigned consistently to any department. Rather, these employees were utilized in production departments at various times as the workload in the plant required—including all production departments except plating, casting, press, package inventory, pick room, central stores, receiving and shipping.

On one occasion night shift employees worked for 3 or 4 days in the press department under the supervision of a day supervisor.

5. Any layoffs subsequent to May 4, if there are any layoffs after May 4, would have been implemented by Respondent in the same manner as the May 4 layoff, namely, without consultation with the Union.

### C. *Analysis and Conclusions*

#### 1. Unilateral changes in incentive standards

Respondent's actions in modifying production standards and incentive bonus rates, from and after May 14, 1979, without consulting or bargaining with the Union, constitute a clear violation of Section 8(a)(1) and (5) of the Act. The duty to bargain about actions so intimately bound up with the rights of the Union and of employees is so plain as not to require further discussion.

#### 2. The April 30 questionnaire

The stipulation on the April 30 polling of employees did not treat either the business reasons for the proposed change in hours, nor the question of whether the change in hours really reflected the views of a majority of the employees. Whatever the business reasons,[15] or whatever the results of the poll may actually have been, such direct dealing with employees is unlawful and a further violation of Section 8(a)(1) and (5) of the Act. *New York Patient Aids Inc. d/b/a Guardian Ambulance Service and American Medical Supplies*, 228 NLRB 1127 (1977); *Shenango Steel Buildings, Inc.*, 231 NLRB 586 (1977).

#### 3. The newspaper advertisement

Apart from the stipulation that Respondent caused an advertisement to be published and posted on its bulletin boards, there is no evidence on what, if any, responses were made to the advertisement or posting, and what, if any, impact the advertisement may have had upon employees.

The General Counsel argues, however, that the advertisement and posting is inherently coercive in that it had the natural effect of inhibiting the desire of employees to cooperate with the Board's investigative processes, and deterring others from so cooperating. *Martin A. Gleason, Inc.*, 215 NLRB 340 (1974). Other cases seem uniformly to hold that it is a violation of law when an employer requests copies of employee statements to the Board, particularly in cases marked by widespread and serious unfair labor practices. The Fourth Circuit's decision in *Robertshaw Controls Company, Lux Time Division* v. *N.L.R.B.*, 483 F.2d 762 (1973), would undoubtedly have been different if the background in that case approached that of this case.

Further, I think it is reasonable to assume, and I do infer that, despite the wording of the advertisement, what Respondent really was asking for was the statements its employees might have given to the Board. Respondent made much in this hearing of its motion to produce these same statements in the prior case.

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[14] G.C. Exh. 5 is a newspaper advertisement, measuring about 3 x 3 inches, bearing the following message:

"TO ALL PRESENT OR FORMER
HEDISON MFG. CO. EMPLOYEES

The management of Hedison Mfg. Co. believes that representatives of the National Labor Relations Board failed to make available to the Company, or to the Court, evidence in their possession tending to establish as false certain unfair labor charges made against the Company.

If you were interviewed, and/or gave a written statement to NLRB agents at any time during the last six months and were *not* called to testify during the recent trial, we would greatly appreciate your contacting Mr. William O'Brien at Hedison, or Mr. David F. Sweeney, Company Attorney, at the box # below

ALL REPLIES WILL BE KEPT CONFIDENTIAL
REPLY TO BOX M8749

[15] I cannot say that the announced reason for the schedule change, or desire to conserve energy, was not a valid, even a laudable, purpose, but that is not really material here.

Thus, if Respondent had gone directly to its employees, or to particular employees[16] and requested copies of their statements, such requests would have been violative of the Act.[17]

However, this is not the way it was done here, and none of the cases cited by the General Counsel, or contained in the analysis in *Robertshaw*, touch upon the two methods used by Respondent here. It seems to me that to equate the placing of an advertisement in a daily newspaper of general circulation in the area, with a face-to-face request, would unduly restrict an employer, even this Respondent in the circumstances of this and the prior case, in its right of free expression. In the absence of any face-to-face requests, and of any evidence that employees were, or perceived that they were coerced I do not find that the newspaper advertisement constituted a violation of the Act.

With respect to the posting of the same material on plant bulletin boards, again in the absence of any evidence of coercive effect, I cannot find this to be a violation of the Act. A request of this type would appear to me to have no more impact even on the limited number of employees to whom it was addressed, than an appeal for blood donors, or for contributions to the community fund.

### 4. The layoffs

As with the changes in incentive standards, it is evident that any layoffs effected by Respondent without consultation with the Union would violate Section 8(a)(1) and (5) of the Act. Thus, the layoff announced on May 4, 1979, constituted a violation of the Act. The parties further stipulated that all layoffs between that time and the date of the hearing herein on August 13, 1979, were implemented without consultation with the Union.

I find, therefore, that the layoff of May 4, 1979, and any layoffs between that time and August 13, 1979, violated Section 8(a)(1) and (5) of the Act. By its failure to notify and bargain with the Union, Respondent made it impossible for the Union to have protected the interests of affected employees, possibly saving them loss of income or jobs, but in any event cushioning the impact of precipitous reassignment or layoff. This fact, coupled with Respondent's demonstrated hostility to the Union and its adherents, its practice of using layoffs as a weapon in its campaign against the Union, and its failure in this hearing to advance any business justification for the May 4 or subsequent layoffs, constrains me to infer and find that antiunion considerations played at least some part in the decision to lay off employees on May 4, and subsequently. This I find constitutes a violation of Section 8(a)(3) of the Act. *Valley Iron & Steel Co.*, 224 NLRB 866 (1976).

[16] It could be inferred that Respondent, because of the extensive interrogation and attempted espionage of union activities revealed in the prior case, knew who had talked to the Board, and, from its observations at the hearing, knew which of those employees had not testified.

[17] This might well have been so, in the atmosphere of this case, even if the standards prescribed in *Johnnie's Poultry Co., John Bishop Poultry Co., Successor*, 146 NLRB 770 (1964), had been observed.

## IV. THE REMEDY

Having found that Respondent has violated Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent is continuing to refuse to bargain with the Union, I shall recommend that, upon request, it commence bargaining concerning wages, hours, and other terms and conditions of employment.

As I have found that Respondent unilaterally and unlawfully changed its incentive rates at times since May 14, 1978, I shall order that Respondent immediately bargain with the Union about such incentive rates, and, upon request by the Union, rescind all such changes. I shall further recommend that Respondent make whole any employees who may have suffered losses in income because of incentive rate changes since May 14, 1978, by the payment to them of sums of money equal to that which they would have earned if the rates had not changed, together with interest thereon.

As I have found that Respondent unilaterally and unlawfully changed the workweek on May 21, 1979, I shall recommend that it bargain with the Union about the workweek, and, upon request of the Union, rescind the change in the workweek. I shall further recommend that Respondent make whole any employees who lost wages because of the change by the payment to them of sums of money equivalent to such lost wages, together with interest thereon.

Having found that Respondent unilaterally and unlawfully laid off employees on May 4, 1979, and possibly on other dates, I shall order that it bargain with the Union about any layoffs, and that it offer immediate and full reinstatement to all laid-off employees to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as the result of Respondent's unlawful conduct computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[18]

The General Counsel has asked that I recommend a broad cease-and-desist order in this case. In view of the findings in the prior case, and the continuation of similar conduct in this case it appears clear that Respondent has a proclivity to violate the Act and has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for its employees' fundamental statutory rights. Accordingly, I shall recommend a broad cease-and-desist order as requested. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

## CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

[18] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

3. By unilaterally changing its incentive standards and its workweek, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. By individually polling its employees concerning the length of the workweek, Respondent has violated Section 8(a)(1) and (5) of the Act.

5. By laying off its employees on May 4, 1979, and at other dates thereafter, without consultation or bargaining with the Union, Respondent has violated Section 8(a)(1), (3), and (5) of the Act.

6. Respondent has not violated the Act in any other manner on the record of this case.

[Recommended Order omitted from publication.]